that the fire was caused by inflammable material on the right of way of the company, or by fire spreading from the right of way, the burden of proving negligence is on the plaintiff. But where the plaintiff has shown that his property was set on fire by sparks from the engine, and the right to recover is based on the negligence of the railroad company in using engines with defective apparatus or equipments, or in negligently and unskillfully managing its engines, the presumption of negligence arises at once, and the burden is on the company to overcome that presumption.

6. RAILROADS—*Fires—Evidence of other recent fires.* Where the question is whether a fire originated from sparks emitted by defendant's engines, evidence of the emission of sparks by defendant's engines at other times near the time of the accident is admissible as tending to prove that the fire was caused by defendant's engines, and also as tending to show a negligent habit on the part of defendant's agents and employees.

CROMWELL v. COMMONWEALTH.—Decided at Staunton, September 23, 1897.—*Harrison*, J:

1. ELECTORAL BOARDS—*Mandamus—Contempt—Habeas corpus.* The members of an electoral board may be compelled by *mandamus* to perform the duties imposed upon them by law, and for failure to obey a peremptory *mandamus* may be punished for their contempt. The proceedings for contempt cannot be reviewed in the Court of Appeals on application for a writ of *habeas corpus*.

MUTUAL FIRE INSURANCE CO. OF LOUDOUN COUNTY v. WARD.—Decided at Staunton, September 27, 1897.—*Keith*, P:

1. INSURANCE—*Knowledge of agent.* An insurance agent who is authorized to receive and accept proposals for risks, to fix premiums, to receive payment, and to issue a receipt which shall constitute the person to whom it is issued a member of the company and act as insurance upon his property until such time as the application shall be laid before the executive committee or board of directors and be acted upon by them, is such an agent of the company that his knowledge, within the scope of his business as such agent, is the knowledge of the company.

2. INSURANCE—*Presumption as to powers of agent—Uncommunicated limitations.* In the absence of evidence to the contrary, the assured has the right to presume that the powers of the agent of an insurance company who solicits his insurance, fills out the application, receives the premiums and issues a receipt therefor which is to act as temporary insurance until his application is passed upon by the company, are co-extensive with the business entrusted to his care. This presumption cannot be overcome by proof of limitations on the powers of the agent not communicated to the assured.

3. INSURANCE—*What knowledge of agent binds company*—Facts relating to the risk, communicated to such an agent of an insurance company, as is described in the case at bar, before or at the time of issuing the policy in suit, bind the company, whether communicated to it by such agent or not.

4. INSURANCE—*Clause against "other insurance"—Effect of agent's knowledge of "other insurance"—Estoppel.* Notwithstanding the provision in an insurance

policy which avoids the policy if there be "other insurance" on the property, unless it be made known to the company and endorsed on the policy or otherwise acknowledged in writing, if the existence of such "other insurance" was communicated to such an agent of the company as is described in the case at bar, the company is estopped to enforce the forfeiture, although the agent may have neglected to communicate his knowledge to the company, and it was in ignorance of the fact at the time the policy was issued, unless the limitations upon the agent's powers was, in some way, brought home to the assured.

5. INSURANCE—*Two houses in same policy—"Other insurance" taken on house not burned.* Where a dwelling-house and tenant-house are insured in one policy, containing the usual clause against "other insurance," and the premium on each is distinct, the clause will be construed distributively, and though "other insurance" be effected on the tenant-house without the consent of the company, as required by the policy, that fact cannot be set up as defence to an action for the destruction of the dwelling-house.

6. PLEADING—*Declaration—Duplicity—Special demurrer.* Duplicity in a declaration cannot be raised except by special demurrer, which has been abolished by statute in this State.

7. INSURABLE INTEREST—*Landlord and tenant.* A landlord has an insurable interest in the furniture of his tenant on the leased premises, when there is rent due and unpaid by the tenant.

FARMERS & MECHANICS BENEVOLENT FIRE INSURANCE ASSOCIATION v. WILLIAMS.—Decided at Staunton, September 27, 1897.—*Keith*, P:

1. EVIDENCE—*Admissibility of parol testimony—Written application for insurance—Parol evidence of statements to agent.* Parol evidence is admissible to show the circumstances under which a written application for insurance was made. Although the written application states that the assured never had property burned, and that a watchman should be kept at the property at night, it may be shown by parol evidence that the assured stated to the agent who filled the blanks in the application for the policy that he had a house burned in another State by fire communicated from other buildings, and that the agent replied that unless the fire originated on his premises it would not be considered his fire, and filled in the answer "none" to the question in the application as to other property burned; and, as to the watchman, that it was agreed between the assured and the said agent that the stipulation in the application and policy as to watchman should be deemed to be complied with by engaging the services of a man as watchman who was employed in that capacity at a saw-mill situated in sight of, and distant not more than sixty or seventy yards from, the property insured.

2. INSURANCE—*Knowledge of agent imputed to company.* Knowledge of facts material to the risk, communicated to the agent of an insurance company who fills out the application for the policy which is subsequently delivered, is imputed to the company, whether communicated to it by its agent, or not, unless it is shown that special limitations on the powers of the agent were known to the assured.